NEGLIGENCE—IMPUTED NEGLIGENCE—GUEST OF AUTOMOBILE DRIVER.—CHADBOURNE V. SPRINGFIELD ST. RY. CO., 85 N. E. 737 (MASS.).—*Held*, where plaintiff, who was inexperienced in the operation of an automobile, was injured while riding as the guest of an experienced driver, in a collision between the automobile and a street car, there being no mutuality in a common enterprise between them, the driver's negligence, if any, was not imputable to plaintiff.

The negligence of the driver of a wagon wherein plaintiff was a passenger by invitation precluded plaintiff from recovering of a railroad company for injuries from a collision at a crossing. *Payne v. C., R. I. & Pac. R. R. Co.*, 39 Ia. 52; *Slater v. B. C. R. & B. Ry. Co.*, 71 Ia. 209; *Whittaker v. City of Helena*, 14 Mont. 124; *Omaha & R. V. Ry. Co. v. Talbot*, 48 Neb. 627. The weight of authority, however, holds that where the plaintiff rides in the vehicle of another, neither exercising nor assuming any control over the movements of the team, the driver does not become the agent of the plaintiff so that negligence contributing to an injury can be attributed. *U. P. Co. v. Lapsley*, 51 Fed. 174; *Strauss v. Newburgh Ry.*, 39 N. Y. Supp. 998.

PARENT AND CHILD—CUSTODY AND CONTROL OF CHILD—RIGHT OF FATHER OF CHILD.—SUARENS ET AL. V. SUARENS, 97 PAC. 968.—*Held*, that where a father was a well-to-do farmer, and was an educated man, and had no immoral habits, and his second wife was well educated and of good character, the court properly awarded to him the custody of a child by his first wife, though the home furnished by the grand-parents of the child was in some respects better than the home of the father.

The old common law rule gave the custody of children to the father as against the mother, and especially as against third persons. *Johnson v. Terry*, 34 Conn. 395. Yet the father may deprive himself of this right by unfitness or voluntary transfer of his right to custody. *Bently v. Terry*, 59 Ga. 555. And unless a sufficient reason is shown, the transfer is irrevocable. *James v. Cleghorn*, 54 Ga. 9; *State v. Barney*, 14 R. I. 62. The child will never be restored unless for its own benefit. *People v. Lohman*, 17 Att. Prac. 395. And the state can take the child from the father, if he is an unfit person. *Reynolds v. Howe*, 51 Conn. 472; *Cincinnati House of Refuge v. Ryan*, 37 Ohio St. 197. But the father cannot be deprived of access to his child. *Matter of Jacquest*, 46 N. Y. Misc. 575. And always the welfare of the child is the principal factor in determining its custody. *U. S. v. Green*, 3 Mass. 482; *Kelsey v. Green*, 69 Conn. 291.

PAROL LICENSES—REVOCATION.—YEAGER V. TUNING, 86 N. E. 657 (OHIO).—The plaintiff and the defendant agreed orally to construct a telephone line over and across their respective lands, to enable them to have telephonic communication with each other, and with persons on other lines. The line, as agreed upon, was built, was of a permanent nature, and of the value of $250.00. The defendant three years afterward, cut the wire and rendered the line useless. *Held*, that such an agreement created merely a parol license, revocable at will. Davis, J., *dissenting*.

Many of the authorities hold that a parol license cannot be revoked, after the licensee relying thereon has made expenditures. *Smith v. Green,* 109 Cal. 228. Even though there be no consideration given for the privilege. *School Dist. v. Lindsey,* 47 Mo. App. 134. Some of the courts hold that the doctrine of estoppel prevents the licensor from revoking in such instances. *Campbell v. Indianapolis & V. R. Co.,* 110 Ind. 490. Others, however, hold that the license may be revoked after a reasonable opportunity has been given to remove improvements made. *Kivett v. McKeittian,* 90 N. C. 106. But in many instances, the question of expenditure, consideration and notice has been disregarded, and it is held that the licensor may revoke at will. *Thoemke v. Fielder,* 91 Wis. 386.

RAILROADS—ACCIDENTS AT CROSSINGS—CONTRIBUTORY NEGLIGENCE.—KURT V. LAKE SHORE & M. S. RY. CO., 111 N. Y. SUPP. 859.—*Held,* that a person, going before daylight around a train obstructing a crossing, is not guilty of contributory negligence as a matter of law in failing to see a train on another track, backing at great speed without signals or other warning and without lights except such as are usually placed at the back end of trains. McLennan, P. J. and Spring, J., *dissenting.*

To be innocent of contributory negligence in such cases, the injured must have exercised that degree of care which the danger of the particular crossing requires of an ordinarily prudent person. *Fitzhugh v. Boston & Maine R. R. Co.,* 80 N. E. 792. The almost universal rule is that one must both look and listen vigilantly; *Salter v. Utica & B. R. Co.,* 75 N. Y. 273; and continuously until out of danger. *Thompson v. N. Y. Cent. R. Co.,* 33 Hun. 16. One is not bound, however, to see or hear the danger; *Greany v. L. I. R. Co.,* 101 N. Y. 419, and a pedestrian who had looked and listened and who was struck in the night time by a train backing rapidly without lights or signals, was held not to be guilty of contributory negligence. *Garran v. Mich. Cent. R. Co.,* 144 Mich. 26. Leaving a street crossing in order to pass a train which is blocking the same, does not constitute contributory negligence. *Robinson v. Western Pac. R. Co.,* 48 Cal. 409.

RAILROADS—INJURIES TO A TRESPASSER.—MORRIS V. GEORGIA R. & BANKING CO., 62 S. E. 579 (GA.).—Plaintiff was riding on the engine of a passenger train by invitation of the conductor, engineer and fireman, and without paying or intending to pay any fare. It did not appear that there was any custom permitting persons to so ride. *Held,* that plaintiff was a trespasser, and that his widow had no cause of action against the company.

A master is liable for the acts of his servants, done in the course of their employment, although they are done in disobedience of the master's orders. *Philadelphia & Reading R. R. Co. v. Derby,* 55 U. S. 468; *Wood on Railroads,* p. 1382. But most of the authorities say that a conductor is not authorized to invite a person to ride without paying a fare. And it is not within the scope of his employment to invite a person to ride on the engine. *Files v. Boston & Albany R. R.,* 149 Mass. 204. Accordingly, there is no liability on the company in such an instance. *Railway Co. v. Cox,* 66 Ohio St. 276. Especially, if defendant knew that the rules of the